

**SUBJECT TO CONFIDENTIAL TREATMENT UNTIL
NOVEMBER 21, 2012**

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

November 7, 2012

**ORDER DESIGNATING
STANDARD OFFER PROVIDER
AND DIRECTING UTILITY TO
ENTER ENTITLEMENTS
AGREEMENT**

MAINE PUBLIC UTILITIES COMMISSION
Standard Offer Bidding Procedure for CMP
and BHE Residential and Small Non-Residential
Customers

Docket No. 2012-00456

BANGOR HYDRO ELECTRIC COMPANY
Request for Approval of Request for Bids
Pursuant to Chapter 307 and Associated
Waivers

Docket No. 2012-00454

WELCH, Chairman; LITTELL and VANNOY, Commissioners

I. SUMMARY

Through this Order, we designate New Brunswick Power Generation Corporation (NB Power) as the standard offer provider for 34% of the load of the residential and small non-residential class in the Bangor Hydro Electric Company (BHE) service territory for a 3-year period beginning March 1, 2013. The resulting overall price for standard offer service for the one-year period beginning March 1, 2013 will be \$0.066945 per kilowatt-hour, which is 6.2% lower than the overall standard offer price for the previous one-year period beginning March 1, 2012. The NB Power standard offer bid was linked to its bid to purchase BHE's non-divested entitlements to energy and capacity associated with the following hydroelectric resources: West Enfield Hydro (Asset ID #616), BHE Small Hydro Composite (Asset ID #1258), and Pumpkin Hill Hydroelectric facility (Asset ID # 42114) (collectively referred to as Hydro Entitlements). BHE is directed to sell the Hydro Entitlements to NB Power for a three-year period beginning March 1, 2013, as specified in the NB Power linked bid.

II. BACKGROUND

Pursuant to Maine's Restructuring Act, the Commission periodically administers a competitive bid process to select providers of standard offer service. 35-A M.R.S.A. § 212(2). The Commission is also required by the Act to oversee the sale by utilities of

the rights to energy and capacity from their non-divested entitlements and other non-divested generation-related assets. 35-A M.R.S.A. § 3204(4).

Since the standard offer service term beginning March 1, 2005, the Commission has segmented the standard offer load for BHE's residential and small non-residential classes as a means to reduce the potential for large price swings. Thus, the Commission ultimately adopted a procurement schedule in which a supply for a third of the load is obtained each year pursuant to three-year arrangements. The Commission continued its practice of allowing bids for standard offer load to be linked to obtaining the output of utility non-divested entitlement contracts. In order to permit linked bids for each of the three segments of load, the Commission directed BHE to segment the sale of the output of non-divested entitlement contracts into pre-specified groups of entitlement contracts.

As one 34% segment to serve standard offer load and BHE's resale of its Hydro Entitlements expire on February 28, 2013, the Commission issued a Request for Proposals (RFP) for 34% of BHE's small classes standard offer load on September 12, 2012. *Order Approving Request for Standard Offer Bids*, Docket No. 2012-456 (September 12, 2012). We asked for bids of one, two and three year terms. On September 12, 2012, the Commission approved BHE's Request for Bids (RFB) to re-sell its Hydro Entitlements and BHE issued the RFB on September 12, 2012. *Order Approving RFB and Granting Waivers*, Docket No. 2012-454 (September 12, 2012).

III. DISCUSSION

We note at the outset that both the standard offer and entitlement sale bid processes were very competitive. As a result, the standard offer prices and sale prices for utility entitlements have been established by a competitive market as contemplated by the Restructuring Act. As mentioned above, we asked for bids for term lengths of one year, two years and three years. We decide to select a bid for three years to maintain the process of annually selecting a standard offer provider to serve one-third of the small class load for a period of three years. Additionally, we choose a three year bid because prevailing market prices are low relative to historic levels due to the underlying natural gas prices that drive electricity prices and the risk of natural gas and electricity prices rising within the next few years outweighs the risk of those prices declining further.

Upon review of all the three-year bids and the selection criteria in Chapter 301, we conclude that the NB Power linked bid provides the greatest value for ratepayers. Additionally, the selection of NB Power satisfies the three-supplier test set forth in Chapter 301, section 8(C)(4) of the Commission's rules because there are already two different suppliers serving standard offer load for BHE's medium and large commercial class. Accordingly, we designate NB Power as the standard offer provider for 34% of the BHE residential and small non-residential classes for a three-year period beginning

March 1, 2013¹ and direct BHE to sell its Hydro Entitlements for a three-year period beginning March 1, 2013 and concluding February 28, 2016 according to the NB Power linked bid.²

Based on our decision today, the overall standard offer price for the BHE small class for the one-year period beginning March 1, 2013 will be \$0.066945. This represents a blended price of this year's winning bid for 34% of the load and the winning bids for the remaining 66% from prior bids. The average entitlement sales price for the Hydro Entitlements over the three-year period is approximately \$37.17 per megawatt-hour.

In designating NB Power as standard offer provider, we accept its statements of commitment and bidder conditions. These documents are attached to and incorporated into this Order. We find that these documents provide useful clarifications as to the precise nature of the standard offer providers' obligations, as well as reasonable protections for the providers with respect to actions of the Maine Legislature, this Commission or the utility. We understand all conditions of the winning bidder are satisfied or will be shortly after the issuance of this Order. We are informed that the modified Standard Offer Provider Service Agreements that were attached to winning bid are acceptable to BHE and we concur that the changes from the standard form are reasonable.

We also find that the security presented by NB Power as part of its linked standard offer proposal is reasonable and consistent with our rules and the RFP.

Finally, we recognize that the linked standard offer and entitlement arrangement approved in this Order create certain obligations and risks for BHE that should be properly borne by customers rather than shareholders. We are informed by our staff that BHE agrees to accept the obligations and risks as long as it is compensated for the financial consequences of satisfying those obligations. Therefore, we explicitly find that any direct or indirect costs, obligations, expenses or damages reasonably incurred by BHE, including administrative and security costs, in fulfilling its obligations or exercising its rights under the various contracts and arrangements authorized by this Order shall be deferred on the utility's books of account as regulatory assets and shall be fully recovered, with carrying costs, from customers either through transmission and distribution rates or standard offer rates. These risks include, but are not limited to:

¹ The winning NB Power standard offer bid is Year 1-\$0.06279/kWh, Year 2-\$0.06417/kWh, Year 3-\$0.06526/kWh.

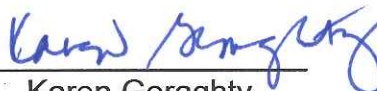
² To the extent necessary, we waive the procedural requirements of Chapter 307 (pursuant to section 11 of the rule) so as to allow the utilities to enter into the entitlement agreements as directed.

- The costs of any performance assurance that BHE may be required to provide a counterparty under the arrangements;
- Any provision that allows for a decrease or offset to the entitlement sale price, such that BHE collects from buyer any amount less than the entitlement sales price approved in this Order, including such decreases or offsets arising from actual or alleged changes in law or regulation;
- Any additional costs or losses that BHE may incur as a result of tolling any termination rights under any agreement pending the outcome of an arbitration proceeding;
- Any costs caused by contractually fixing any fees applicable to the standard offer provider for any period time, where such fees are otherwise subject to change;
- Any incremental costs attributable to the execution of the linked standard offer arrangements, including those related to the solicitation, evaluation, and negotiation of those arrangements; and
- Any costs or losses that BHE incurs as a result of a default by NB Power on any of their contractual or other obligations and the consequential termination of any contract or obligation associated with the linked standard offer and entitlement arrangements authorized in this Order for which BHE is not compensated by associated security.

This Order will be treated as designated confidential information pursuant to the Protective Order issued in this proceeding for a two-week period. After that, the confidential treatment of this Order will be removed.

Dated at Hallowell, Maine, this 7th day of November, 2012.

BY ORDER OF THE COMMISSION



Karen Geraghty
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Littell
 Vannoy

COMMISSIONER ABSENT: None

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought. Any petition not granted within **20** days from the date of filing is denied.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21** days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.

**New Brunswick Power Generation Corporation Bidder Conditions
Final Bid Proposals (November 7, 2012)**

**MPUC Small Class Standard Offer Service RFP
Bangor Hydro Electric Company (Bangor Hydro or T&D)
Issued September 12, 2012**

New Brunswick Power Generation Corporation's (NB Power or Provider) Standard Offer Bid contains pricing with the following contingencies:

- a) Stand Alone Bid - Bid Prices for the Stand Alone Bid is valid for 34% of the Small Class for either 12, 24 or 36 months inclusive.
- b) Linked Bid - Bid Prices for the Linked Bid is valid for 34% of the Small Class for either 12, 24 or 36 months inclusive, and is contingent upon NB Power being awarded BHE's Hydro entitlements for the awarded term of standard offer service.
- c) Bid Proposal Expiration Date – will be close of business Eastern Prevailing Time on November 7, 2012.
- d) Increased Costs Associated With Change in Law. If either (1) the applicable Transmission and Distribution (T&D) Utility (Central Maine Power Company, or Bangor Hydro-Electric Company) changes its current regional participation status [i.e. withdraws from New England Independent System Operator (ISO-NE) and joins another regional operator/administrator or operates independently] after the date hereof (a "Change in Participation") or (2) the Maine legislature or the Commission enacts, promulgates, adopts, alters, modifies or waives¹ any law, rule or regulation that relates directly to the provision of standard offer service or the provision of competitive electric service in general after the date hereof (a "Change in Law") and such Change in Participation or Change in Law materially increases the Provider's cost to provide standard offer service, Provider shall recover such increased costs in accordance with paragraph (a) or paragraph (b) below, as applicable. Provider shall provide the Commission and, if applicable, the Maine Legislature with a calculation of its increased costs as soon as practicable after becoming aware of a Change in Participation or Change in Law or consideration by the T&D Utility, Commission or the Maine Legislature of a Change in Participation or Change in Law. (a) If the Commission finds that Provider's calculation reasonably reflects its increased costs, the Commission shall increase the price of standard offer service paid by retail standard offer customers at the time a Change in Participation or Change in Law becomes effective or take other action so that Provider recovers increased costs in accordance with Provider's calculation. (b) If the Commission does not find that Provider's calculation reasonably reflects its increased costs, the Commission may increase the price of standard offer service

¹ Except for opt-out fee waivers granted by the Commission pursuant to its January 24, 2001 "Order Adopting Rule and Statement of Factual and Policy Basis" (Docket No. 2000-904).

paid by retail customers or take other action such that the Provider recovers increased costs in accordance with the Commission's calculation. In this event, Provider may invoke binding arbitration of the increased cost amount by notice to the Commission. Any such arbitration shall be conducted in accordance with the rules of the American Arbitration Association, except as otherwise provided herein. A final arbitration decision shall be rendered no later than ninety (90) days after the date on which Provider provides notice to the Commission that it has invoked arbitration. To the extent the arbitration panel finds that a Change in Participation or Change in Law has occurred and has increased the Provider's costs, the arbitration panel shall have the authority to award the Provider a liquidated amount payable for service already provided at the increased cost. The Commission, within a reasonable period of time after receipt of the arbitration decision, shall award the Provider an increase in the price of standard offer service to be provided for the balance of the standard offer term or take other action sufficient to permit the Provider to recover such increased costs as determined by the arbitrator.

Notwithstanding the foregoing, if upon receipt of reasonable prior direct notification of a proposed Change in Participation or Change in Law, the Provider fails within the longer of the time prescribed in such notice or 90 days to inform the Maine Legislature or the Commission, pursuant to applicable procedures identified in such notice, of the impact that a Change in Participation or Change in Law under consideration would have on Provider's cost to provide standard offer service, Provider shall not be entitled to cause the Commission to undertake action with respect to its increased costs or to engage in arbitration proceedings with respect thereto as provided in clause (a) or (b) above.

- e) Confidentiality of Bidder Identification – The Commission agrees not to reveal the identity of Provider prior to the date which is two (2) weeks after the date of the Order designating Provider as a Standard Offer Service Provider.
- f) Standard Offer provider Standard Service Agreement – The named T&D shall execute, deliver and perform the Standard Offer Provider Standard Service Agreement, Entitlement Agreement, if applicable, and the Comprehensive Credit Support and Final Settlement Calculation Agreement, if applicable, between Provider and T&D in the forms, as applicable, delivered to the Commission with the Final Bid Price Proposal (the "SOP Agreement(s)") within two days after the Proposal Expiration Date.
- g) Termination by Provider - In the event of a default on the part of the T&D which results in termination of the SOP Agreement, or an unlawful or arbitrary action by the Maine legislature, governmental entity with jurisdiction in Maine or the Commission or other action by the Commission (other than as a result of a Provider Default) as a result of which Provider ceases to receive full compensation for standard offer service at the rate and upon the terms specified herein or Provider is removed as the standard offer provider or ceases to retain the right to provide standard offer service for the entire term specified herein, Provider shall have the right (among other remedies) to terminate its obligation to provide standard offer service, the exercise of which shall terminate all of

Provider's SOP Obligations. The parties' payment of termination damages in the event of such a termination shall be calculated and recovered pursuant to the relevant liquidation provisions of the Comprehensive Credit Support and Final Settlement Calculation Agreement or SOP Agreement, as applicable. For purposes of such calculation, Provider's loss shall not include any consequential or indirect damages.

- h) Security – The Commission shall find that the form of letter of credit delivered to the Commission with the SOP Agreements is acceptable. The financial assurance shall be in the form of the letter of credit in the total amount of the Base Security. During the term of the SOP Agreement NB Power may, subject to the terms of the SOP Agreements and MPUC approval, replace all or a portion of the letter of credit with a Guaranty and conversely all or a portion of the Guaranty with a letter of credit. The Base Security amount for the Stand Alone Bid is \$2.8 million per year for the awarded term, and as specified in the RFP such Base Security amount shall automatically be reduced pro-rata during the term of service. The Base Security amount for the Linked Bid is \$1.8 million for one year awarded term, \$3.6 million for two year awarded term, or \$5.5 million for three year awarded term, and such Base Security amount shall automatically be reduced pro-rata during the term of service. If NB Power provides both a Guaranty and letter of credit, then NB Power shall specify to the T&D which form of financial assurance that will be reduced by the pro-rata amount.

STATEMENT OF COMMITMENT

The Bidder hereby represents that if it submits any firm bid price proposal(s) in response to this Maine Public Utilities Commission RFP (RFP), such bid price proposal(s) are a firm offer to provide standard offer service and/or TOU offer service, as applicable: (1) in accordance with Maine law and regulations and the provisions of the RFP; (2) at the prices and for the amounts and term lengths specified on the Bid Price Proposal Sheets submitted by Bidder; and (3) subject only to contingencies and conditions agreed upon between Bidder and the Maine Public Utilities Commission.

The Bidder hereby represents that, if designated a standard offer or TOU offer provider by the Commission, Bidder will accept, abide by and fulfill all applicable obligations and terms and conditions of Maine law and regulations, and all applicable obligations, requirements, terms and conditions stated in the RFP, and that Bidder will submit to the jurisdiction of the courts of the State of Maine and the Maine Public Utilities Commission in matters relating to the provision of standard offer or TOU offer service, and that Bidder agrees that all legal proceedings relating to Bidder's provision of standard offer or TOU offer service will be conducted before Maine courts or the Maine Public Utilities Commission. Bidder further represents that, if designated a standard offer or TOU offer provider by the Commission, Bidder will provide standard offer and/or TOU offer service in the amounts, for the term lengths, and at the prices specified in its firm price proposal throughout the term of service.

The Bidder hereby certifies that all of the statements and representations made in its proposal are true to the best of the Bidder's knowledge and belief.

Company submitting proposal:

New Brunswick Power Generation
Corporation

Bidder Name:

(If different than above)

Signature of an Officer of Bidder:

Keith Cronkrite

Print or type name of Officer above:

Keith Cronkrite

Officer Title:

VP Generation & Business Development

Date Signed:

Oct 1, 2012

Wendy J. Hansen
Corporate Secretary & General Counsel

October 1 2012